IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) Smt. Bhanwari Devi Joshi Vs. State & Anr.
S.B. CR. REVISION PETITION NO.865/2006

(2) Kailash Joshi Vs. Smt. Bhanwari Devi
S.B. CR. REVISION PETITION NO.597/2006

Against order dated 28.03.2006 passed by Judge, Family Court, Jodhpur in Criminal Misc. Case No.91/2005 - Smt. Bhanwari Devi Vs. Kailash Joshi.

DATE OF ORDER :: 10th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. L.N. Bissa for Smt. Bhanwari Devi.
Mr. Iqbal Sherani for Mr. Kailash Joshi.
Mr. V.R. Mehta, Public Prosecutor.

BY THE COURT:

These petitions have been filed against the order dated 28.03.2006 passed by learned Judge, Family Court, Jodhpur in Criminal Misc. Case No.91/2005- Smt. Bhanwari Devi Vs. Kailash Joshi, whereby Smt. Bhanwari Devi has

been allowed interim maintenance @ Rs.1500/- per month on an application moved by her under Sec.125 Cr.P.C.

In the petition filed by wife Smt. Bhanwari Devi, she challenges the order of maintenance on the ground of maintenance being too low and prays for its enhancement while in the other petition filed by husband Kailash Joshi, he challenges the order on the ground of wife not being entitled to maintenance and prays for its quashment.

Since both the revisions arise out of one and the same order passed by Family Court and main contesting parties are same, these petitions are being disposed of by this common order.

The facts as would transpire from these two petitions are to the effect that Bhanwari Devi was married with Kailash Joshi about 37 years ago as per Hindu customs and rituals in village Sawra, District Jodhpur and out of the wedlock, three children; one daughter and two sons, viz., Rajkumari, Ashok and Manoj were born. The husband was a Personal Assistant in the Office of Registrar, Cooperative

Societies (Appeals), who retired in the year 1995 after seeking voluntary retirement from service and started living at Jaipur. The wife came to know that her husband contracted second marriage with another lady and was living with that lady and two children at Jaipur without obtaining the decree of divorce. He started neglecting her without any sufficient cause or reason and even refused to maintain her. It was alleged that her husband was getting monthly pension of Rs.7,000/- and was also earning Rs.7000-8000 per month from astrology. She claimed Rs.8,000/- per month as interim maintenance by moving an application under Section 125 Cr.P.C. before the learned trial court. In counter, husband Kailash Joshi accepted his marriage with Bhanwari Devi and did not deny the factum of three children out of the wedlock with Smt. Bhanwari Devi, however, stated that he was getting pension Rs.4875 per month only and after his retirement he was leading life of a saint. He also stated that he had shared the retiral benefits with her wife and children and the applicant wife is living with the sons, who are earning Rs.40,000 per month by running two shops. Besides this, they are also having two Turbos, and out of those they are deriving income to

the tune of Rs.1.5 lac per month, thus they are not unemployed. The husband alleged that he was turned out of the house in the year 2003 after beating and he finding no way out, married with another lady Nanda Bohra. In last, he prayed for rejecting the application. In the affidavit submitted in support of the counter claim, the husband also stated that the wife was having also income of rent from the premises given on rent. He further stated that after occurring problem in his spine in the year 1993, he cannot sit or walk properly and in addition to that he is also suffering from high blood pressure which causes swellings on his feet and the doctors have advised him bed rest but the wife, children and son-in-law want to devour his assets, so in order to illegally pressurize him, a false case has been instituted against him. He denied the claim of wife for maintenance.

The learned trail Court by the impugned order dated 28.03.2006 has allowed interim maintenance to wife as aforesaid. Hence, these petitions.

A careful perusal of the judgment of the learned trial Court would show that the learned Magistrate has meticulously gone into the case and after considering the evidence of the parties, awarded the maintenance. Prima facie, it appears that the husband has neglected the wife and refused to maintain her and the learned trial Court has not committed any illegality or perversity in passing the order of maintenance. In the circumstances, the maintenance awarded @ Rs.1500/- per month to the wife is reasonable and adequate which calls for no enhancement. In my view, the trial Court is justified in awarding maintenance after considering all aspects of the matter. Therefore, interference of this Court sought to be made in the above revisions do not merit acceptance and the only decision that could be arrived at by this Court is to dismiss the above petitions.

In the result, the petitions stand dismissed.

(SATYA PRAKASH PATHAK)J.

/jpa